



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 906 and 944**

[Doc. No. AMS-FV-14-0009; FV14-906-1 IR]

**Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas and Imported Oranges; Change in Size Requirements for Oranges**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule relaxes the minimum size currently prescribed for oranges under the marketing order for oranges and grapefruit grown in Lower Rio Grande Valley in Texas (order). The order is administered locally by the Texas Valley Citrus Committee (Committee). The corresponding change in the orange import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This rule relaxes the minimum size requirement for oranges from 2-6/16 inches to 2-3/16 inches in diameter. This rule will provide additional oranges to meet market demand, helping to maximize fresh shipments.

**DATES:** Effective March 1, 2014; comments received by April 29, 2014 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including oranges, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13175, and 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes the minimum size requirement for oranges prescribed under the order. This rule relaxes the minimum size requirement for oranges from 2-6/16 inches to

2-3/16 inches in diameter. This rule will provide additional oranges to meet market demand and will help maximize fresh shipments. This change was unanimously recommended by the Committee at a meeting on December 11, 2013.

Section 906.40 of the order provides, in part, authority to establish minimum size requirements for Texas citrus. Section 906.340 of the rules and regulations includes Table I that specifies the numerical size designations and diameters used to delineate the available pack sizes for oranges. Section 906.365 specifies the minimum size requirement for fresh shipments of Texas oranges. Minimum grade and size requirements for oranges imported into the United States are currently in effect under § 944.312.

At its meeting, the Committee discussed the impact the recent freeze in California had on the orange crop and agreed the freeze had reduced the amount of fruit available for shipment to the fresh market. They also discussed the decline in citrus production in Florida caused by citrus greening and other diseases. The Committee believes this creates a shortage of fruit available to supply the fresh fruit market, which the Texas citrus growers and handlers should fill. The Committee noted that additional fruit was

available from the Texas citrus industry. However, the fruit is smaller in size and would not meet the order's current size requirements. The Committee also recognized that consumers are now showing a preference for smaller-sized fruit. The Committee believes relaxing the requirements would make more fruit available to fill the market shortfall caused by the decline in production of oranges from other growing regions and provide smaller-sized fruit to meet consumer demand.

Consequently, to make more fruit available for shipment to the fresh market and to meet consumer demand, the Committee recommended a relaxation of the size requirements for oranges. This rule changes the minimum size requirement for oranges from 2-6/16 inches (size 138) to 2-3/16 inches (size 163) in diameter. This rule also adds size 163 to the available pack sizes for oranges listed under Table I in § 906.340, as well as adding language concerning pack and sizing requirements as appropriate.

The Committee believes relaxing the size requirement will make more fruit available to meet market demand, helping to maximize fresh shipments and increasing returns to growers and handlers.

Section 8e of the Act provides that when certain domestically produced commodities, including oranges, are

regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule changes the minimum size requirement under the domestic handling regulations for oranges, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for oranges imported into the United States are currently in effect under § 944.312. Section 944.312(i) of the Fruit Import Regulations specifies that oranges imported into the United States are in most direct competition with oranges produced in the area covered by Marketing Order No. 906. This change relaxes the minimum size requirement for imported oranges from 2-6/16 inches to 2-3/16 inches. The relaxation in the minimum size requirement also has a beneficial impact for importers of oranges. This change allows a smaller-sized orange to be shipped to the United States, thereby increasing the amount of fruit available for shipment to the fresh market, thus benefiting importers.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 13 registered handlers of Texas citrus who are subject to regulation under the marketing order and approximately 150 producers of oranges in the regulated area. There are approximately 220 importers of oranges. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service and the industry and Committee, the average f.o.b. price for Texas oranges during the 2012-13



season was \$25.30 per box, and total fresh orange shipments were approximately 1.5 million boxes. Using the average f.o.b. price and shipment data, the majority of Texas orange handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices, and the total number of Texas citrus growers, the average annual grower revenue is below \$750,000.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh oranges ranged from approximately \$71.2 million in 2008 to \$107.4 million in 2012. Using these values, most importers would have annual receipts of less than \$7,000,000 for oranges. Thus, the majority of handlers, producers, and importers of oranges may be classified as small entities.

Chile, South Africa, Mexico, and Australia are the major orange-producing countries exporting oranges to the United States. In 2012, shipments of oranges imported into the United States totaled around 119,000 metric tons. Of that amount, 51,510 metric tons were imported from Chile, 35,960 metric tons were imported from South Africa, 17,421 metric tons were imported from Mexico, and 11,100 metric tons arrived from Australia.

This rule relaxes the minimum size requirement for oranges covered under the order from 2-6/16 inches (size

138) to 2-3/16 inches (size 163) and makes a corresponding change to the orange import regulation. This change is expected to make additional fruit available for shipment to the fresh market, maximize shipments, provide additional returns to handlers and growers, and respond to consumer demand for small-sized fruit. Authority for this change is provided in § 906.40. This rule amends the provisions in §§ 906.340, 906.365, and 944.312. The Committee unanimously recommended this change at its December 11, 2013, meeting. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase the costs associated with the order's requirements or the orange import regulation. Rather, it is anticipated that this action will have a beneficial impact. Reducing the size requirement will make additional fruit available for shipment to the fresh market. The Committee believes that this will provide additional fruit to fill the shortage caused by the reduced amount of fruit available from other growing regions and will provide the opportunity to fulfill growing consumer demand for smaller sized fruit. This action will also provide an outlet for fruit that may otherwise go unharvested, maximizing fresh shipments and increasing returns to handlers and growers. The benefits of

this rule are expected to be equally available to all fresh orange growers, handlers, and importers, regardless of their size.

An alternative to this action would be to maintain the current minimum requirements for domestic shipments of oranges. However, leaving the requirements unchanged would not make any additional fruit available nor would it provide smaller-sized fruit to meet consumer demand. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 11, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.  
Any questions about the compliance guide should be sent to

Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the size requirements for oranges currently prescribed under the marketing order for oranges and grapefruit grown in Lower Rio Grande Valley in Texas and imported oranges. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The shipping season for oranges has already started; (2) this action relaxes current

size requirements; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

### **List of Subjects**

7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges

For the reasons set forth in the preamble, 7 CFR parts 906 and 944 are amended as follows:

PART 906 - ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 906.340, paragraph (a)(2)(i)(A) and Table I-Oranges are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) Oranges, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table I, and meet the requirements of standard pack; and, when in containers not packed according to a definite pattern, shall be sized in accordance with the sizes in Table I and otherwise meet the requirements of standard sizing: Provided, That the packing tolerances in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed. All fruit packed to size 163 in the following Table I shall be sized in accordance with the sizes in Table I but need not otherwise meet the requirements of standard sizing or standard pack: Provided, That they meet the same tolerances for off-size and pack as defined in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona):

Table I - Oranges  
[7/10 bushel carton]

Pack size/Number of oranges	Diameter in inches	
	Minimum	Maximum
24	3-12/16	5-1/16
32	3-6/16	4-9/16

36	3-4/16	4-6/16
40	3-2/16	4-4/16
48	2-15/16	4
56	2-13/16	3-13/16
64	2-11/16	3-10/16
72	2-9/16	3-8/16
88	2-8/16	3-4/16
113	2-7/16	3
138	2-6/16	2-12/16
163	2-3/16	2-8/16

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\* \* \* \* \*

3. In § 906.365, paragraph (a)(2) is revised to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) \* \* \*

(2) Such oranges are at least pack size 163 with a minimum diameter of 2-3/16 inches;

\* \* \* \* \*

#### PART 944 - FRUITS; IMPORT REGULATIONS

4. In § 944.312 paragraph (a), remove the number "2-6/16" and add in its place "2-3/16."

Dated: February 26, 2014.

Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.



[FR Doc. 2014-04603 Filed 02/27/2014 at 8:45 am; Publication  
Date: 02/28/2014]